

REMARKS

Reconsideration and withdrawal of the rejections of the claimed invention is respectfully requested in view of the amendments, remarks and enclosures herewith, which place the application in condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1-6 and 11-20 are pending in this application. No new matter has been added by this amendment.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112.

II. THE 35 U.S.C. 103(a) REJECTION HAS BEEN OVERCOME

A. Claims 1-6 and 11-20 were rejected as allegedly being obvious by Saito et al. (EP 0 864 567 -“Saito”). The applicants request reconsideration of this rejection for the following reasons.

B. Claims 1-6 and 11-20 were rejected as allegedly being obvious by Lorenz et al. (WO 97/31904 -“Lorenz”). The applicants request reconsideration of this rejection for the following reasons.

The applicants’ previous response (with respect to the specific stereochemistry and stereochemical purity of the present invention) to the above rejections from the response filed on 7 July 2009 are incorporated here by reference.

The applicants also note that since the applicants previous reply, the PTO has issued their further guidelines with respect to obviousness inquiry after KSR. See *Federal Register*, vol. 75, no. 169, 53643.

Given the differences between the presently claimed invention and Saito/Lorenz, the obviousness rejection that of being obvious to try based on the broad teachings of Saito/Lorenz. However, neither Saito nor Lorenz represents a finite number of identifiable predictable solutions when applied to the problem of identifying a specific stereoisomer. Given the breadth of possible moieties from Saito/Lorenz, there was virtually an infinite number of stereoisomers possible with no direction given to those claimed by the applicants.

Therefore, the applicants’ claimed invention is unobvious over Saito or Lorenz.

III. THE OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION HAS BEEN OVERCOME

Claims 1-6 and 11-20 have been provisionally rejected under obviousness-type double patenting over claims 1-20 of co-pending application no. 11/733,337 ("the '337 application"). The applicants note that the '337 application was filed after the present application and as such the claims from the present invention can be allowed over the claims of the '337 application without a terminal disclaimer in the present application.

The applicants also argue that the claims of the '337 application would not represent an obvious variant of the presently claimed invention. For example, the 6-position of the triazine ring on the compounds of the '337 application requires a $-\text{CHF}_2$ moiety while there is no such limitation on the presently claimed compounds. Likewise, the present applicant requires a specific stereochemistry between the carbon atom and 2-position amino linker on the 1,3,5-triazine ring which is not required by the '337 application.

CONCLUSION

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution.

Respectfully submitted,
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